cedural requirement that agencies analyze the environmental impact of the proposed mining at a specific site, North Rasmussen Ridge." *Id.* at 12. The court concluded that "[n]ot only is the geographic link missing, the substantive concrete injury is wholly absent." *Ibid.*

Petitioners do not challenge that holding. The "question presented" section of the petition seeks reversal of the court of appeals' decision only on the ground that it allegedly conflicts with three decisions of the Eighth Circuit and *Bennett* v. *Spear*, 520 U.S. 154 (1997). The argument section of the petition argues only that the court of appeals' application of the "zone of interest" test—a prudential, not constitutional, standing requirement—was contrary, in petitioner's view, to the application of that test by the Eighth Circuit in the cited cases and by this Court in *Bennett*. Neither the question presented nor the argument in the petition challenges the court of appeals' independent holding that petitioner lacks constitutional standing to assert its alleged procedural injury due to the absence of a concrete injury.

That holding is dispositive of this case, regardless of the correctness of the court of appeals' application of the "zone of interests" test. Cf. *Steel Co.* v. *Citizens for a Better Env't*, 523 U.S. 83, 101-102 (1998) (court must resolve threshold Article III standing issue before merits). Accordingly, because petitioner does not challenge the court of appeals' holding that petitioner lacked Article III standing, resolution of the question of prudential standing presented in the petition could not affect the outcome of this case. See, *e.g.*, *Izumi Seimitsu Kogyo Kabushiki Kaisha* v. *U.S. Philips Corp.*, 510 U.S. 27, 31-32 (1993) (per curiam) (dismissing writ of certiorari as improvidently granted because court of appeals denied

intervention to petitioner and petition did not seek review of the adverse intervention decision). Further review is therefore unwarranted.

b. Even if the constitutional issue had not been waived, it would in any event not warrant further review. The court of appeals' holding on Article III standing does not conflict with any decision of any other court of appeals, and it does not present an issue of sufficient recurring importance to warrant this Court's review in the absence of such a conflict. Moreover, the court of appeals' Article III standing holding is correct.

In *Lujan*, this Court made clear that a plaintiff asserting a violation of a procedural right can establish standing "so long as the procedures in question are designed to protect some threatened concrete interest of his that is the ultimate basis of his standing." 504 U.S. at 573 n.8. The Court noted that

> under our case law, one living adjacent to the site for proposed construction of a federally licensed dam has standing to challenge the licensing agency's failure to prepare an environmental impact statement, even though he cannot establish with any certainty that the statement will cause the license to be withheld or altered, and even though the dam will not be completed for many years.

Id. at 572 n.7. The Court warned, however, that the alleged violation of a procedural rule by itself cannot satisfy the concrete injury requirement and that the Court would not accept "standing for persons who have no concrete interests affected—persons who live (and propose to live) at the other end of the country from the dam." *Ibid.*

Applying *Lujan*, the court of appeals found that petitioner lacked a sufficient "geographic nexus" with the project that is the subject of the challenged EIS. Pet. App. Tab 4, at 11. To be sure, *Lujan* did not specifically consider whether a plaintiff asserting an alleged economic injury, rather than an environmental injury, would have to show a sufficient geographic nexus with a project to establish a concrete injury. But the NEPA procedures that petitioner alleges were violated in this case are clearly not, in *Lujan*'s terms, "designed to protect" an economic interest of a property holder like petitioner, whose property is hundreds of miles from the project in question and whose only interest is in selling an alternative product in the event Agrium's application for the North Rasmussen Ridge site is denied. 504 U.S. at 573 n.8. Accordingly, the court of appeals correctly held that petitioner has not shown a cognizable injury under *Lujan*.

In any event, petitioner lacks Article III standing for an additional reason: its injury is not redressable. Neither the agency decisionmaker nor the reviewing court has the authority to control Agrium's choice of a source to obtain phosphate. BLM has authority only to approve, approve with modifications, or reject Agrium's mine and reclamation plan for the proposed expanded mining operation on North Rasmussen Ridge. See Pet. App. Tab 4, at 6-7. BLM has no power to require Agrium to obtain phosphate from petitioner's Utah deposits. Even if BLM rejected Agrium's plan on the basis of a revised EIS evaluating petitioner's proposed alternative, at best Agrium might have an economic incentive to obtain phosphate from petitioner; it would not be bound to do so. Rather than purchasing phosphate from petitioner, which Agrium has already rejected as too

expensive, Agrium could choose another source of phosphate for its plant, or it could choose to close its Idaho plant entirely. See *id.* at 6.

Where redress of a plaintiff's injury depends entirely on the response of third parties to government economic incentives of the sort that petitioner sought to create here by urging BLM to deny Agrium's mine and reclamation plan, this Court has held that those third parties' probable responses to the incentives are too speculative to satisfy the constitutional redressability requirement.[1] *Simon* v. *Eastern Ky. Welfare Rights Org.*, 426 U.S. 26, 43-44 (1976); see *ASARCO, Inc.* v. *Kadish*, 490 U.S. 605, 615 (1989) (opinion of Kennedy, J.) (holding that plaintiffs could not establish standing because whether their "claims of economic injury would be redressed by a favorable decision in this case depends on the unfettered choices made by independent actors * * * whose exercise of broad and legitimate discretion the courts cannot presume either to control or to predict"); *Allen* v. *Wright*, 468 U.S. 737 (1984) (holding that the chain of causation between tax incentives and school desegregation based on the choices of private individuals responding to those

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[1] Moreover, even if Agrium decided to consider petitioner as a possible phosphate supplier, by petitioner's own assessment, it is speculative at this point whether petitioner could obtain the approvals necessary to mine its Vernal, Utah, phosphate deposits. See Pet. Resp. to Mot. to Dismiss 7 (Dist. Ct. Docket #15) (conceding that "[a]pplication for necessary mining roads on the Vernal leases were filed * * * years ago, and remain pending" and that "approval of a mining plan for the Vernal leases remains pending"). Because further approvals would be needed for the mining of petitioner's Vernal deposits, it is even more speculative whether BLM's denial of Agrium's North Rasmussen Ridge plan would redress petitioner's alleged economic injury.

incentives was too attenuated for plaintiffs to have standing). The same conclusion follows here.[2]

2. Even if petitioner could establish constitutional standing, it would still lack prudential standing to challenge the EIS. Among the prudential principles "that bear on the question of standing" is the requirement that "a plaintiff's grievance must arguably fall within the zone of interests protected or regulated by the statutory provision or constitutional guarantee invoked in the suit." *Bennett*, 520 U.S. at 162 (quoting *Valley Forge Christian Coll.* v. *Americans United for Separation of Church & State*, 454 U.S. 464, 474 (1982)). "Whether a plaintiff's interest is arguably protected by the statute within the meaning of the zone-of-interests test is to be determined not by reference to the overall purpose of the Act in question * * * , but by reference to the particular provision of law upon which the plaintiff relies." *Id.* at 175-176 (internal quotation marks and alterations omitted).

a. The court of appeals' decision reflects a straightforward application of the test for prudential standing established in *Bennett*. This Court's cases establish that the purpose of Section 102(2)(C) of NEPA, 42 U.S.C. 4332(2)(C), the provision under which petitioner bases

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[2] In *Bennett* v. *Spear*, *supra*, this Court concluded that the redressability requirement was satisfied because the challenged Biological Opinion and Incidental Take Statement had a "virtually determinative effect" on the Bureau of Reclamation's conduct. 520 U.S. at 170. Thus, the challenged Biological Opinion was likely to cause the Bureau to reduce water deliveries to the plaintiff farmers, and an order setting aside the Biological Opinion was likely to redress that injury. *Id.* at 170-171. Here, in contrast, even if BLM were to deny Agrium a permit to mine at North Rasmussen Ridge, it remains entirely speculative whether Agrium would then turn to petitioner to obtain phosphate.

its claim, is to protect environmental concerns. *E.g.*, *Metropolitan Edison Co.* v. *People Against Nuclear Energy*, 460 U.S. 766, 774 (1983) (holding that an EIS need only assess impacts of a project with a "reasonably close causal relationship" to "a change in the physical environment"); *Weinberger* v. *Catholic Action of Hawaii/Peace Educ. Project*, 454 U.S. 139, 143 (1981) (holding that Section 102(2)(C)'s two goals are "to inject environmental considerations into the federal agency's decisionmaking process" and "to inform the public that the agency has considered environmental concerns"); *Andrus* v. *Sierra Club*, 442 U.S. 347, 350 (1979) (holding that the "thrust of § 102(2)(c) is * * * that environmental concerns be integrated into the very process of agency decisionmaking"); see Pet. App. Tab 4, at 11. Accordingly, the courts of appeals have consistently ruled that NEPA's zone of interests does not include purely economic concerns. *E.g.*, *Ranchers Cattlemen Action Legal Fund United Stockgrowers of Am.* v. *United States Dep't of Agric.*, 415 F.3d 1078, 1103 (9th Cir. 2005); *Taubman Realty Group Ltd. P'ship* v. *Mineta*, 320 F.3d 475, 481 (4th Cir. 2003); *Town of Stratford* v. *Federal Aviation Admin.*, 285 F.3d 84, 89 (D.C. Cir. 2002); *Nevada Land Action Ass'n* v. *United States Forest Serv.*, 8 F.3d 713, 716 (9th Cir. 1993); *Port of Astoria* v. *Hodel*, 595 F.2d 467, 475 (9th Cir. 1979). The court of appeals in this case applied that same principle. See Pet. App. Tab 4, at 13-15.

b. Despite petitioner's contention (Pet. 16-19), the court of appeals' decision is consistent with *Bennett*. As explained above, the court of appeals applied the *Bennett* zone of interests test to the particular statutory provision at issue, Section 102(2)(C) of NEPA, and con-

cluded that the provision did not protect purely economic interests like petitioner's.

Bennett interpreted Section 7 of the Endangered Species Act of 1973 (ESA), which imposes the substantive requirements that each federal agency shall "insure that any action authorized, funded, or carried out by such agency * * * is not likely to jeopardize the continued existence of" a species listed as threatened or endangered under the ESA or "result in the destruction or adverse modification of" designated critical habitat. 16 U.S.C. 1536(a)(2); see generally *Bennett*, 520 U.S. at 157-158 (giving an overview of the ESA). Section 7 of the ESA also requires that agencies "use the best scientific and commercial data available" when fulfilling those requirements. 16 U.S.C. 1536(a)(2). *Bennett* held that at least one purpose of the data requirement is "to prevent uneconomic (because erroneous) jeopardy determinations," and thus economic interests are included in Section 7's zone of interests. 520 U.S. at 177.

In contrast, it is well established that NEPA is a procedural statute that requires agencies to consider the environmental impacts of major federal actions, but does not require them to reach any particular substantive result when making a decision. *Robertson* v. *Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989). Section 102(2)(C) of NEPA requires an EIS to include analysis of, *inter alia*, "alternatives to the proposed action." Contrary to petitioner's assertion (Pet. 15-16), there is no indication that the alternatives requirement is intended to protect the economic interests of a competing supplier of raw materials. Accordingly, the court of appeals' conclusion that Section 102(2)(C) of NEPA does not protect the purely economic interests of petitioner is consistent with *Bennett*.

c. Petitioner also errs in contending (Pet. 7, 10, 19-21) that the court of appeals' decision conflicts with rulings of the Eighth Circuit. Petitioner cites no decision in which that court held that an injury solely to a plaintiff's purely economic interests was sufficient to establish prudential standing to challenge an EIS or an environmental assessment (EA) and finding of no significant impact (FONSI). Contrary to petitioner's argument (Pet. 8-9, 20-21), the Eighth Circuit in *Friends of the Boundary Waters Wilderness* v. *Dombeck*, 164 F.3d 1115, 1126 (1999), was not faced with that question, because the plaintiff wilderness outfitters in that case alleged injury to their own aesthetic interest in enjoying the area affected by the agency decision, in addition to harm to their economic interests. Those plaintiffs, unlike petitioner, also conducted their business on the very land that would be affected by the agency action.[3] *Ibid.* As the court of appeals noted, *Friends of the Boundary Waters* can be "persuasively distinguished" on those grounds. See Pet. App. Tab 4, at 19.

Subsequent Eighth Circuit decisions interpreting *Friends of the Boundary Waters* also do not hold that an injury to purely economic interests establishes standing

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[3] Petitioner explicitly disavows (Pet. 7 n.1) any reliance upon 40 C.F.R. 1508.14, the regulation cited by *Friends of the Boundary Waters*. Thus, neither the meaning of that regulation nor the question whether regulations may be used to determine the zone of interests of a statutory provision are presented by the petition. In any event, as the court of appeals recognized (Pet. App. Tab 4, at 22), even if the regulation could be used to determine Section 102(2)(C)'s zone of interests, it does not support petitioner's contention that the statute protects economic interests completely divorced from environmental effects, because the regulation requires analysis of economic effects only when they "are interrelated" with "natural or physical environmental effects." 40 C.F.R. 1508.14.

to challenge an EIS, despite petitioner's assertion to the contrary (Pet. 9-10). Rather, both *Central South Dakota Cooperative Grazing District* v. *Secretary of Agriculture*, 266 F.3d 889, 895-897 (8th Cir. 2001), and *Rosebud Sioux Tribe* v. *McDivitt*, 286 F.3d 1031, 1039 (8th Cir. 2002), cert. denied, 537 U.S. 1188 (2003), hold only that purely economic injuries are *insufficient* to establish standing to challenge an EA and FONSI. See *Grazing Dist.*, 266 F.3d at 895 ("Economic interests alone are 'clearly not within the zone of interests to be protected by [NEPA].'") (citation omitted); *id.* at 896-897 ("[I]f its interests are only economic, [plaintiff] is not within the zone of interests of the provision under which it has asserted its claim and thereby lacks prudential standing."); *Rosebud*, 286 F.3d at 1037 ("The Intervenors argue [that plaintiff] lacks standing under NEPA because the interests it seeks to protect are solely economic. We agree."); *id.* at 1038-1039. Accordingly, any statements in those opinions interpreting *Friends of the Boundary Waters* to mean that purely economic injury might in other circumstances establish standing to challenge an EIS are *dicta*. See *id.* at 1038; *Grazing Dist.*, 266 F.3d at 895-896. Although the court of appeals here expressed disagreement with the broad construction of *Friends of Boundary Waters* suggested by the *dicta* in *Grazing District* and *Rosebud Sioux Tribe* (Pet. App. Tab 4, at 18-19), there is no actual conflict among the circuits over whether injury only to purely economic interests is within NEPA's zone of interests.[4]

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[4] The court of appeals' decision does not create an intra-circuit conflict with *Sausalito* v. *O'Neill*, 386 F.3d 1186 (9th Cir. 2004), because, as petitioner acknowledges (Pet. 10), *Sausalito* did not address the zone of interests test under NEPA. In any event, such a conflict, even if it existed, would not warrant this Court's review. *Wisniewski*

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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MAY 2006

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v. *United States*, 353 U.S. 901, 902 (1957) (per curiam).

(2)

No. 05-1209

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In The

Supreme Court of the United States

ASHLEY CREEK PHOSPHATE CO.,

Petitioner,

v.

GALE NORTON, Secretary, United States Department of the Interior; NU-WEST INDUSTRIES, INC., dba: Agrium Conda Phosphate Operations,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

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THE PETITION CHALLENGES THE RULING IN ENTIRETY

The Solicitor's claim that the Petition does not contest the ruling of the Ninth Circuit that "[n]ot only is the geographic link missing, the substantive concrete injury is wholly absent", is difficult to follow. The ruling that, even where an Environmental Impact Statement ("EIS") must consider "alternatives", *only* injury resulting from geographic proximity to the proposal suffices for "constitutional standing", is challenged by assertion that injury to economic interests in a geographically distinct "alternative", *also* suffices for "constitutional standing". It constitutes a challenge to assert that the requirement imposed is impermissibly narrow and exclusive.

The Question Presented challenges the entire ruling, and the introductory paragraph of the Argument states:

> The Ninth Circuit's holding that standing of a plaintiff, who asserts that a completed EIS is inadequate for lack of the discussion of the "alternatives" required by 42 U.S.C. §4332(2)(C)(iii), requires an "environmental" injury in keeping with the overall purpose of the act, conflicts expressly and specifically with the Eighth Circuit application of *Bennett v. Spear*, 520 U.S. 154 (1997), as well as with a proper reading of *Bennett* itself.

(Pet. at 7.) The reference to "environmental injury" is plainly to the Court of Appeals' requirement of an injury due to "geographic nexus".

The Court of Appeals believed that plaintiff could not allege a "substantive concrete injury" *because* it had no "geographic link" to the proposed mining project, *and* an

economic injury was not a cognizable "substantive concrete injury". Supposing the Court of Appeals was wrong on the second proposition, as alleged by the Petition, it was necessarily wrong on the first point. By challenging the Court of Appeals' insistence that there is no cognizable injury without "geographic nexus", the Petition plainly challenges it on both points.

While Judge Beezer thought that the ruling could rest on a finding of no "geographic nexus", the majority of the Court of Appeals realized that unless it also held that economic injury is insufficient, the ruling could not stand. That is the majority ruling of the Court of Appeals, and it is properly challenged in entirety by this petition.

INJURY IN FACT: TRACEABILITY; REDRESSABILITY

The requirement that an EIS explore "alternatives" is explained in part by the extensive body of law defining "alternatives". An EIS must consider "reasonable" alternatives, which accomplish the purpose of the proposal, with comparable or superior economic and environmental results. *E.g., Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190 (D.C. Cir. 1991); *Alaska Wilderness Recreation & Tourism v. Morison*, 67 F.3d 723 (9th Cir. 1995).

The effect of the requirement to consider alternatives plainly may be to limit the marketing of federal mineral reserves where economically and environmentally preferable reserves are available. The effect is more pronounced where the mineral is scarce, occurring in disparate locales, and its development limited by availability of commercial transport. In the latter circumstance – the circumstances

of this case – the effect of the requirement may be close to compulsion of economic decisions regarding development of resources. For example, a refusal to permit the development of environmentally unsound federal reserves, because distant private or state reserves are found to be an economically and environmentally superior alternative, may compel development of the latter unless the applicant wishes to abandon his project.

Provisions having a similar effect of limiting entrants into a market have been held to create a protectable economic interest. *National Credit Union Admin. v. First Bank & Trust Co.*, 522 U.S. 479 (1998).

The government's response assumes that there is some analysis in the Ninth Circuit's ruling comparable to the discussion in *Bennett v. Spear,* 520 U.S. 154, 168-71 (1997), of traceability of potential injury to the administrative action challenged, and redressability of potential injury if relief is granted. In fact, the Ninth Circuit's discussion relative to these matters consists of two paragraphs (App. Tab.4, at 12):

> What is missing in this case is a legally sufficient link between Ashley Creek's interest – getting the BLM to analyze unrelated phosphate deposits 250 miles away from the proposed mines – and NEPA's procedural requirement that agencies analyze the environmental impact of the proposed mining at a specific site, North Rasmussen Ridge. Not only is the geographic link missing, the substantive concrete injury is wholly absent.
>
> Under Ashley Creek's theory, any owner of a phosphate mine, whether located in Alaska, Utah, or Florida, would have standing to challenge the EIS. Why stop there? Taking Ashley

> Creek's framework one step further, the BLM would be obligated not only to analyze the environmental suitability of unrelated phosphate deposits, but also phosphate substitutes that might be more eco-friendly.

According to the Court of Appeals, the latter matters *must* be considered by the BLM if raised by a resident of the locale of a proposed mine, but not otherwise. In the first instance, these are "environmental" concerns; in the second, not.

It is a legally sufficient "link" that the statute's "procedural requirement" includes one to consider "alternatives".

The Court of Appeals substitutes for the analysis of alternatives required, a preliminary disqualifier of distance. In fact, the distance between plaintiff's reserves and defendant's plant,[1] is no more dispositive in the present case than was the distance between the Clear Lake and Gerber reservoirs and the plaintiff irrigation districts and ranches in *Bennett v. Spear*. Further, merely noting a distance between the source proposed and an alternative source does not constitute an analysis of traceability or redressability. The same analysis of traceability and redressability is readily performed in the present case. The Court of Appeals performed no such analysis; it is provided here to rebut the Solicitor's presumption that petitioner's position is deficient in this regard.

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[1] There is no evidence in the record of this distance. In fact, it is less than 200 miles, rather than the 250 parroted by the Court of Appeals.

The legislative fact is that NEPA disfavors implementation of proposals that are economically and environmentally inferior to available alternatives in the way that the Endangered Species Act ("ESA") construed in *Bennett* disavows actions entailing needless economic dislocation where reasonable and prudent alternatives exist. An analysis to identify such alternatives is required by both statutes. This naturally protects in similar ways those having vested interests in such alternatives.

An EIS which properly considers alternative sources of scarce minerals may be just as determinative of future options as a biological opinion in the context of the ESA. A biological opinion defines options for an "action agency" which will operate federal assets. Violation of the guidance provided, resulting in the "taking" of a threatened species, may incur substantial penalties. Such an EIS prioritizes action "alternatives" for those who would exploit federal resources. Permits may be refused or limited by such an EIS on the ground that superior alternatives exist. While this does not penalize, it may be just as restrictive regarding uses and benefits of federal property, and violation of such limitations by unauthorized use may result in penalties.

If done well, such an EIS identifies options which accomplish the purpose of the application for permit with at least as beneficial economic results. It must be presumed that an applicant will have at least as strong an economic incentive to pursue such options as to pursue the original proposal. Thus, while an applicant refused a federal permit and remitted to another alternative might refuse to adopt it, eliminating potential benefits to its proprietor, he may only do so by abandoning his project. There is no reason to believe he will do so where a superior

alternative accomplishing his purpose has been identified. In short, a properly performed EIS has similar prospects of benefiting proponents of "alternatives" as a properly performed biological opinion.

Performance of a proper EIS in this case which identified plaintiffs' reserves as the preferable alternative, and denied the permit sought on that basis, would not *guarantee* that Agrium would deal with plaintiff. It should be recalled, however, that Agrium initially identified plaintiffs' reserves as preferable, and ultimately rejected them on a claim of cost. Identification of plaintiff's alternative as the preferable one by the EIS would require overcoming the reservation about costs. Thus, it is inaccurate to say that redressability is prevented by the "unfettered discretion" of Agrium to disregard the EIS. Agrium's options may be severely fettered by denial of a permit, leaving the Ashley Creek reserves the only practical source for Agrium's plant.

Injury to Ashley Creek's interest is just as traceable to the refusal of the BLM to comply with the statute as was injury to plaintiff's interest in *Bennett v. Spear*, and just as redressable by compliance.

PRUDENTIAL STANDING

The standing issue in this case is *not* whether persons interested in a potential alternative to a proposed action should be permitted to intervene in the initial determination whether the proposal threatens the local environment, requiring an EIS. Cases arising in that context are not determinative. *See, e.g., Lujan v. Defenders of Wildlife*,

504 U.S. 555 (1992); *Douglas County v. Babbit*, 48 F.3d 1495 (9th Cir. 1995).

The BLM identified the threat, and required the EIS. That decision made, the statute requires that the EIS include a discussion of *alternatives* to the proposal. 42 U.S.C. §4332(2)(C)(iii). The applicable regulations (40 C.F.R. §§1502.14, 1502.15) provide the following detail:

> **§ 1502.14 Alternatives including the proposed action.**
>
> *This section is the heart of the environmental impact statement. . . . [I]t should present the environmental impacts of the proposal and the alternatives in comparative form,* thus sharply defining the issues and providing a clear basis for *choice among options by the decisionmaker and the public.* In this section agencies shall:
>
> (a) *Rigorously explore and objectively evaluate all reasonable alternatives,* and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.
>
> (b) Devote substantial treatment to *each alternative* considered in detail *including the proposed action* so that reviewers may evaluate their comparative merits.
>
> (c) *Include reasonable alternatives not within the jurisdiction of the lead agency.*
>
> (d) Include the alternative of no action.
>
> (e) Identify the agency's preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement. . . .

> (f) Include appropriate mitigation measures not already included in the proposed action or alternatives.
>
> **§ 1502.15 Affected environment.**
>
> The environmental impact statement shall succinctly describe *the environment of the area(s) to be affected or created by the alternatives under consideration.*

(Emphasis added). The Court of Appeals' summary of the present case, quoted *infra*, pages 3 and 4, is simply a willful misstatement of the statute. The "link" between analyzing alternative sources of supply and analyzing environmental impacts is that, under the statute, they are the same "comparative" analysis. Nor is the link broken because the alternative sources are not in the same "geographic" area: the analysis must "include reasonable alternatives not within the jurisdiction of the lead agency" and "shall succinctly describe the environment of the *area(s)* to be affected or created by the alternatives [including the proposal] under consideration". The suggestion that reasonable alternative sources are "unrelated" because geographically separate, simply misstates the statute.

It makes sense, where the issue is solely threat to the environment near a proposed project, (the precursor issue to requiring an EIS), to limit standing to those invested in the locale. Once the issue has become "comparative" "environmental impacts" in "the area(s) to be affected or created by the alternatives under consideration", and with the purpose of selecting a "preferred alternative or alternatives", limiting standing to those invested in the area of the proposed alternative is senseless.

If the agency prefers an alternative source on federal land distant from the original proposal, may a resident of the area not question whether impacts to his environment have not been sufficiently considered or properly compared? May he not do so on the ground that potential environmental effects may injure him economically? Has one invested in the area of a rejected alternative no standing to protest that the preferable alternative of development in his area has been inadequately considered, depriving his area of the benefits of economic development? Does it matter in any of these examples whether the alternative land is federal, state or private? If it does not matter whether the alternative land is within the jurisdictional boundaries of the BLM office where the application is pending, does it matter that it lies across a state boundary?

The Court of Appeals' presumption that no one can be injured by the process of consideration and preference of alternatives except those invested in the area near the original proposal, is preposterous. The Court of Appeals has simply failed to understand that, at least in the context of supply of minerals, once consideration of *alternatives* is required, the process involves potentially *multiple* properties, not limited to the one proposed by the applicant. The standing of all those invested in all properties reasonably included, is the same.